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February 6, 1998

Magalie Roman Salas
Secretary
Federal Communications Commission
P.O. Box 358140
Pittsburgh, PA 15251-5140

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**Re: Petition for Waivers and Declaratory Rulings to Enable
American Samoa To Participate In The Universal Service
High Cost Support Program and the National Exchange
Carrier Association Pools and Tariffs**

Dear Ms. Salas:

On behalf of the American Samoa Government and the American Samoa Telecommunications Authority, enclosed for filing is an original and four copies of the petition of the American Samoa Government and the American Samoa Telecommunications Authority for waivers and declaratory rulings to enable American Samoa to participate in the universal service high cost support program and the National Exchange Carrier Association pools and tariffs.

Also enclosed for filing is FCC Form 159 and a check for \$5665.00.

If you have any questions, please contact the undersigned.

Respectfully submitted,



Richard S. Rodin
David L. Sieradzki
Cindy D. Jackson
Counsel for the American Samoa
Government

Enclosures

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
American Samoa Government and the)
American Samoa Telecommunications)
Authority)
)
Petition for Waivers and Declaratory)
Rulings to Enable American Samoa)
To Participate In The Universal Service)
High Cost Support Program and the)
National Exchange Carrier Association)
Pools and Tariffs)

**PETITION OF THE
AMERICAN SAMOA GOVERNMENT AND THE
AMERICAN SAMOA TELECOMMUNICATIONS AUTHORITY**

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Telecommunications Authority

February 6, 1998

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**PETITION OF THE
AMERICAN SAMOA GOVERNMENT AND THE
AMERICAN SAMOA TELECOMMUNICATIONS AUTHORITY**

I. INTRODUCTION AND SUMMARY

The American Samoa Government ("ASG") and the American Samoa Telecommunications Authority ("ASTA"), by counsel and pursuant to Sections 1.2 and 1.3 of the Commission's rules, hereby request the waivers and declaratory rulings necessary to allow ASTA, which provides local telecommunications services in the insular territory of American Samoa, to participate in the high cost support mechanisms of the universal service program, and to enable ASTA to become a member of the National Exchange Carriers Association ("NECA").

In particular, ASG and ASTA request:

- A declaratory ruling that ASTA may participate in NECA's tariffs and pools;
- A waiver of the provisions in Parts 36 and 69 that restrict application of those rules to incumbent local exchange carriers ("LECs");
- A waiver of Sections 36.611 and 36.612 to enable ASTA to receive high cost loop support based on forecasted or estimated costs;
- A waiver of the definition of "average schedule company" and certain other provisions in Part 69 to enable ASTA to participate as an average schedule company in NECA's access tariffs and pools as of July 1, 1998;
- A waiver of the definition of "study area" in Part 36; and
- Any other waivers and/or declaratory rulings that may be necessary to enable ASTA to receive all forms of high-cost support provided in the Commission's rules.

Without the necessary waivers and declaratory rulings, ASTA would be precluded from receiving universal service high cost support. This result would be contrary to the results envisioned by the Telecommunications Act of 1996 ("1996 Act"). The Joint Conference Report of the 1996 Act indicates that Section 254(b) was explicitly amended to add "'insular areas' (such as the Pacific Island territories) and 'low income consumers' to the list of consumers to whom access to telecommunications and information services should be provided" under universal service. ^{1/} Thus, while the 1996 Act specifically entitles American Samoa to participate in the universal service program, ASTA would be precluded from

^{1/} Joint Managers' Statement, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess., at 131 (1996).

receiving universal service high-cost support unless the requested waivers and declaratory rulings are granted by the Commission.

II. BACKGROUND

Until 1998, the local telephone network in American Samoa 2/ was operated by ASG through the American Samoa Office of Communications ("ASOC"). 3/ Because of American Samoa's remote location, limited economy, and small population base, private companies have not been interested in providing local telecommunication services or originating long distance services in the territory to date. On January 9, 1998, the Governor of American Samoa issued an executive order creating ASTA, which will administer the telecommunications operations formerly run by ASOC, but will be operated as a separate entity from ASG, with an independent board of directors. 4/

2/ American Samoa, an unincorporated territory of the United States, is located 14 degrees south of the equator, about 2,300 miles southwest of Hawaii, and more than 4,100 miles southwest of San Francisco. The territory lies approximately 1,600 miles northeast of New Zealand, and approximately 40 miles east of the independent country of Western Samoa, with which American Samoa has close cultural, economic, and family ties. Persons born in American Samoa are nationals but not citizens of the United States. As of July 1, 1996, the population of American Samoa was 58,000.

3/ ASG inherited this network from the U.S. Department of Defense and the U.S. Department of the Interior, which formerly administered the territory.

4/ Copies of the Executive Orders establishing ASTA are attached to this petition.

ASTA provides local service covering the main island and the principal outer islands of American Samoa. The ASTA system is broadly used by residents of the main island and the outer islands. More than 80 percent of the households in American Samoa subscribe to telephone service provided by ASTA. ASTA provides local subscribers with a full range of modern service features. These include single-party lines, touch-tone dialing, emergency numbers, directory assistance, operator assistance, interexchange capability, and access to the Internet.

While providing the citizens of American Samoa with a full range of telecommunications services, ASTA maintains a low monthly subscriber rate of \$9.00 for full single-party service and unlimited local calling. In January 1998, pursuant to Part 54, Subpart I of the Commission's rules, ASTA implemented a Lifeline rate plan for low-income consumers, with a monthly rate of \$3.75 for local service. This plan should be especially popular given American Samoa's annual per capita income of \$3,309 and median annual household income of \$16,114.

With fewer than 50,000 access lines, ASTA qualifies as a "rural telephone company" under Sections 3(37) and 251(f)(1) of the 1996 Act. In addition, the Governor of American Samoa, by Executive Order No. 13-1997 adopted December 1, 1997, designated ASTA's predecessor, ASOC, as an "eligible telecommunications carrier" pursuant to Sections 214 and 254 of the Communications Act. 5/

5/ A copy of this executive order is attached to this petition.

ASTA also provides outbound interstate and international service, and provides part of the interexchange communications link for inbound interstate and international calls. On October 1, 1997, ASG submitted its proposed plan for the implementation of rate integration in American Samoa. ^{6/} As part of its rate integration plan, on October 1, 1997 and on January 1, 1998, ASOC implemented two reductions to its interstate long distance rates, resulting in rates approximately 35% lower than pre-existing rates (45% reduction compared to rates prior to July 1, 1996). ASOC also eliminated the distinctions between rates to Guam and the Commonwealth of the Northern Mariana Islands ("CNMI") and rates to other U.S. points.

In the *Rate Integration Plan*, ASG proposed to remain outside the North American Numbering Plan ("NANP"). This proposal is currently pending before the Commission. The *Rate Integration Plan* also included other steps ASG plans to implement to regularize its status under the Commission's regulations. The creation of ASTA is one important step in carrying out this plan. In the future, ASTA intends to establish separate LEC and interexchange carrier ("IXC") entities.

^{6/} ASG has indicated its intent to establish separate operating entities to provide local and long distance service. American Samoa Government's Proposed Rate Integration Plan for American Samoa, CC Docket 96-61, filed October 1, 1997 ("*Rate Integration Plan*"), at 12-13. The establishment of ASTA is a critical step in the process of implementing this plan. The instant petition pertains exclusively to the local operations of ASTA.

III. AMERICAN SAMOA'S IMMEDIATE PARTICIPATION IN THE UNIVERSAL SERVICE HIGH COST SUPPORT PROGRAM IS IN THE PUBLIC INTEREST

The primary goal of the universal service program is to promote the nationwide availability of reasonably-priced telephone services by providing "direct assistance to the areas where it is most needed to ensure that telephone rates remain affordable for the average subscriber." 7/ The 1996 Act was specifically intended to include the Pacific insular territories, including American Samoa, into the universal service program. 8/ But certain of the Commission's universal service high cost support eligibility rules are structured such that, in effect, they require carriers to have been members of NECA and to have received support from pre-existing universal service mechanisms. While ASTA (and its predecessor, ASOC) have been providing low-cost local exchange telecommunications services to the citizens of American Samoa for many years, they have not participated in NECA revenue pools or other pre-existing universal service mechanisms. In this instance, adherence to the rules will frustrate, rather than further, this goal by denying cost recovery from the universal service to a territory of the United States.

7/ *In the Matter of MTS and WATS Market Structure Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Dockets Nos. 78-72, 80-286, Recommended Decision and Order, 49 Fed. Reg. 48325, ¶ 58.

8/ *See supra* note 1 and accompanying text.

To carry out the intent of the 1996 Act and the Commission's universal service rules, waivers 9/ and declaratory rulings 10/ are required to enable ASTA to participate in the universal service support mechanisms as of January 1, 1998. The requested waivers and declaratory rulings will permit ASTA to receive universal service payments promptly based on estimated or forecasted data, rather than based on the specific historical data required by the rules. These waivers and declaratory rulings would advance the public interest because they would enable American Samoa to participate fully in the universal service program, consistent with the intent of the Congress 11/ and the Commission 12/ in fashioning the program. And they are justified by the "special circumstance" that, unlike the vast majority of rural telephone companies, ASTA has not been a NECA member or a participant in pre-existing universal programs.

9/ Under Section 1.3 of the Commission's rules, the Commission may waive any provision on the basis of "good cause" where strict compliance would be inconsistent with the public interest. 47 C.F.R. § 1.3. In turn, "good cause" requires a showing of two elements: (1) that "special circumstances" warrant a deviation from the rules, and (2) that such a deviation would serve the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

10/ The Commission may issue a declaratory ruling to "terminat[e] a controversy or remov[e] uncertainty." 47 C.F.R. § 1.2.

11/ See *supra* note 1 and accompanying text.

12/ See *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8947, ¶ 318 (1997) ("*Universal Service Order*").

IV. SPECIFIC RELIEF REQUESTED

A. Participation in NECA

The Commission has granted two prior requests from carriers that have sought to become NECA members despite not having previously participated in NECA revenue pools. In *Offshore Telephone Company*, the Commission held that for a company to be eligible to become a member of NECA, it “must demonstrate that it is similar to the carriers that . . . participate in the Association. That is, [the carrier] . . . must demonstrate that it is a telephone exchange company, that provides local exchange [services], and that it provides access services.” ^{13/} In *Guam Telephone*, the Commission noted that Section 69.2(hh) of the Commission’s rules defines a “telephone company” as “a carrier that provides telephone exchange service as defined in Section 3(r) [now Section 3(47)] of the Communications Act of 1934.” ^{14/}

^{13/} *Guam Telephone Authority*, CCB/CPD File No. 96-29, DA 97-1007, 1997 WL 241955 at ¶ 13 (“*Guam Telephone*”) (citing *The Offshore Telephone Company Request to Participate in the National Exchange Carrier Association*, 3 FCC Rcd 4513, 4517 ¶ 28 (1988), *aff’d per curiam sub. nom. Offshore Telephone Company v. FCC*, 873 F.2d 408 (D.C. Cir. 1989) (“*Offshore Telephone Company*”)).

^{14/} *Guam Telephone* at ¶ 14 (citing 47 C.F.R. § 69.2(hh)). Under Section 3(47), the term “telephone exchange service” is defined to mean a “service within a telephone exchange or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge.” 47 U.S.C. § 153(47).

ASTA clearly meets the criteria to be considered a telephone company that provides telephone exchange service; the local telephone service it provides in American Samoa is precisely “telephone exchange service” as defined by the Act. Similarly, ASTA meets the criterion of providing exchange access service. ^{15/} The outbound interstate and international long distance service provided by ASTA’s long-distance operation depends on access to ASTA’s local telephone facilities. Similarly, the inbound long distance service provided by other carriers to American Samoa depend on the use of ASTA’s local facilities to complete calls. While the local operations of ASTA currently do not charge the long-distance operations of ASTA an explicit rate for exchange access, such an explicit access charge will be imposed once the reorganization proposed in the ASG’s *Rate Integration Plan* is implemented. Moreover, because the local ASTA entity will charge the access rates listed in NECA’s tariffs, the requested waiver is a precondition for the reorganization to be completed.

B. Waiver Of The Provisions In Parts 36 And 69 That Restrict Application Of Those Rules To Incumbent LECs.

Sections 36.611 and 69.2 require that telephone companies be “incumbent LECs,” as defined in Section 251(h) of the Act, in order to participate in

^{15/} Section 3(16) of the Communications Act defines “[t]he term ‘exchange access’ [to] mean[] the offering of access to telephone exchange services or facilities for the purposes of the origination or termination of telephone toll services.” 47 U.S.C. § 3(16).

NECA tariffs and pools and to file data pursuant to Section 36.611. 16/ As the Commission noted in *South Park Telephone Company*, “the purpose of the incumbent LEC restriction in Section 36.611 is to distinguish competitive LECs from incumbent LECs for purposes of calculating universal service support” 17/ Although ASTA was not deemed to be a member of NECA in February, 1996, and therefore does not meet the statutory definition of an incumbent LEC, historically and at present, ASTA is the sole provider of local exchange and exchange access service in American Samoa, and clearly is not a competitive LEC. As such, a waiver of the incumbent LEC requirements is appropriate, as the underlying purposes of the incumbent LEC requirements in Part 36 and Part 69 of Commission’s rules are not applicable to ASTA.

C. Waiver of Historic Cost Rules

In addition to requiring carriers to be members of NECA in order to receive high-cost universal service disbursements, the Commission’s rules require that calculations of universal service disbursement for high cost loop support be based on certain historical cost information that has been provided to NECA. 18/

16/ 47 U.S.C. § 251(h); 47 C.F.R. §§ 36.611, 69.2.

17/ *South Park Telephone Company*, Petition for Waiver of Sections 36.611 and 36.612 of the Commission’s Rules, Order, DA 97-2730 at ¶ 12 (Dec. 31, 1997) (“*South Park Telephone*”); see also *Sandwich Isles Communications, Inc.*, Petition for Waiver of Section 36.611 of the Commission’s Rules and Request for Clarification, Order, DA 98-166 at ¶ 15 (February 3, 1998) (“*Sandwich Isles*”).

18/ See 47 C.F.R. §§ 36.611 and 36.612.

ASTA, of course, has not been a member of NECA in the past, and has no such cost information. Because the Commission's rules require calculation of universal service disbursement for high cost loop support to be based on a carrier's historical cost information, application of the Commission's rules in this instance would preclude ASTA from receiving universal service support for high cost loops until 2000. As the Commission acknowledged in the *Universal Service Order*:

We agree with Guam Tel. Authority that, under the principles set out in section 254(b)(3) this carrier should be eligible for universal service support and clarify the procedures to be used for any carrier, such as Guam Tel. Authority, that may not have historical costs studies on which to base the set support amounts. Guam Tel. Authority or any other carrier serving an insular area, such as CNMI, that is not currently included in the existing universal service mechanism, shall receive support based on an estimate of annual amount of their embedded costs. 19/

Based on the above language from the *Universal Service Order*, it is unclear whether any waiver of the Commission's historic cost rules is necessary in order for ASTA to receive USF support as of January 1, 1998. Out of an abundance of caution, however, ASG and ASTA hereby request any waiver that may be necessary of the Commission's historic cost rules in order to enable ASTA to receive universal service support effective from January 1, 1998, the date the funds became available under Part 54 of the Commission's rules. 20/ ASTA proposes to submit to

19/ *Universal Service Order*, 12 FCC Rcd at 8947, ¶ 318 (footnotes omitted).

20/ *See Sandwich Isles*, ¶¶ 11-12 (authorizing universal service support retroactively to Jan. 1, 1998).

NECA an estimate of historical costs and/or rolling annualized average of current costs, which would be subject to quarterly true-up adjustment based on actual costs. The latter methodology has previously met with Commission approval. 21/ Although initial support to ASTA would be based on estimates and/or projections, the projections would be updated quarterly, thus diminishing reliance on the projected costs, and ultimately resulting in universal service payments based solely on experience.

D. Waiver of Certain Provisions in Part 69 to Enable ASTA to Participate As An Average Schedule Company in NECA's Access Tariffs As Of July 1, 1998

ASG and ASTA request a waiver of the provision in Section 69.605(c) of the Commission's rule which defines an "average schedule company" to be "a telephone company that was participating in average schedule settlements on December 1, 1982." 22/ At this time, ASTA is seriously considering whether it should participate in NECA's access pools as an average schedule company or as a "cost-based" carrier. ASTA intends to work closely with NECA in this regard. ASG and ASTA seek a waiver of the Commission's rules to enable ASTA to participate in NECA's access tariffs and pools as an average schedule company if ASTA, in

21/ See *South Park Telephone; Border to Border Communications, Petition for Waiver of Sections 36.611 and 36.612 of the Commission's Rules*, Memorandum Opinion and Order, 10 FCC Rcd 5055 (1995) ("*Border to Border*"); *Sandwich Isles*.

22/ 47 C.F.R. 69.605(c).

consultation with NECA, determines that the average schedule company basis is appropriate.

In addition, ASG and ASTA request a waiver of the provisions of Section 69.3 that require advance notification in order to participate, effective July 1, 1998, in NECA's common line, traffic sensitive, and end user tariffs and pools. 23/

E. Waiver of the "Study Area" Definition

ASG and ASTA also request a waiver of the "study area" definition for purposes of Parts 36, 54, and 69 of the Commission's Rules. Part 36 Appendix-Glossary indicates that "study area boundaries shall be frozen as they are on November 15, 1984." 24/ American Samoa has never been classified as a "study area" in the past. In light of the need to have a designated "study area" in order to calculate historical cost, a waiver of the definition is necessary to ensure that ASTA may receive universal service for high cost loop support.

F. Clarification That American Samoa's Participation In the North American Numbering Plan Is Not Relevant to ASTA's Ability to Join NECA or To Receive High Cost Support

The issue of whether American Samoa will enter the NANP is the subject of another proceeding currently pending before the Commission, and we do not seek any ruling in this proceeding that would affect that decision. We merely

23/ 47 C.F.R. 69.3.

24/ 47 C.F.R. Part 36 Appendix-Glossary.

seek clarification that the outcome of that proceeding is not relevant to ASTA's ability to receive universal service support or to participate in NECA.

V. CONCLUSION

For the foregoing reasons, ASG and ASTA respectfully request that the Commission grant all waivers and declaratory rulings necessary, including any waiver or declaratory ruling but not specifically requested herein, in order to allow ASTA to participate in all of the universal service high cost support mechanisms as of January 1, 1998. Grants of these declaratory rulings and waivers will allow ASTA to receive universal service high cost support, and will ensure that the people of American Samoa have access to low cost telecommunications services as envisioned by Congress in enacting the 1996 Act.

Respectfully submitted,

AMERICAN SAMOA GOVERNMENT AND
AMERICAN SAMOA TELECOMMUNICA-
TIONS AUTHORITY

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Counsel for the American Samoa
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Telecommunications Authority

February 6, 1998

ATTACHMENT

**Executive Orders Establishing
American Samoa Telecommunications Authority**



OFFICE OF THE GOVERNOR
American Samoa Government
Pago Pago, American Samoa 96799

TAURSE P.F. SUNIA,
Governor

TOGIOLA T.A. TULAFONO,
Lt. Governor

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EXECUTIVE ORDER No. 02 -1998

**AN ORDER ESTABLISHING THE AMERICAN SAMOA
TELECOMMUNICATIONS AUTHORITY**

Section 1: Authority

This Executive Order is issued under the authority granted to the Governor in Article IV, Section 6, American Samoa Revised Constitution, Title 4 A.S.C.A. Section 4.0111(b) and applicable sections of the Federal Communications Act of 1934, as amended, and the Telecommunications Act of 1996.

Section 2: Preamble and Purpose

WHEREAS, the local communications network in American Samoa, with connections to other United States and international points, was originally constructed by the U.S. Navy and the U.S. Department of the Interior; and

WHEREAS, the network was inherited, improved and expanded by the American Samoa Government which operates the Office of Communications under the direction of the Director of Communications, who is appointed by the Governor; and

WHEREAS, the Office of Communications is mandated to comply with certain provisions of the 1934 Communications Act and the 1996 Telecommunications Act; and

WHEREAS, the American Samoa Government has filed with the Federal Communications Commission (FCC), on October 1, 1997, its Plan to regularize the Office of Communications status under FCC Regulations; and

WHEREAS, the American Samoa Government is committed to comply with all applicable federal regulations pertaining to the operation of the government's communications system by the Office of Communications.

NOW, THEREFORE, the creation of the American Samoa Telecommunications Authority is hereby authorized, with the duties and responsibilities as set forth herein.

Section 3: Establishment of the American Samoa Telecommunications Authority

There is hereby established, within the Executive Branch of the American Samoa Government (ASG), the American Samoa Telecommunications Authority (ASTA), formerly known as the Office of Communications. ASTA shall exist as a semi-autonomous agency of ASG and will be governed by a board, which shall be known as the ASTA Board, consisting of three (3) members who are appointed by the Governor for terms of two (2) years.

Section 4: Composition and Qualifications of ASTA Board

Of the three gubernatorial appointees, one member shall be from the American Samoa Government Employees' Retirement Fund Board; a second member shall be an ASG career employee selected on the basis of character, competence, education, experience, and judgement; and the third member shall be from the private sector, selected on the basis of character, competence, education, accounting and finance experience and judgement.

Section 5: ASTA Board Duties and Responsibilities

The ASTA Board shall have the following duties and responsibilities:

- (1) elect its own chairman annually.
- (2) hire an Executive Director who shall be directly responsible to the Board for the proper and efficient management of ASTA.
- (3) establish and promulgate rules and regulations, not inconsistent with local and federal laws, for users of telecommunications services in American Samoa.
- (4) review and approve the Annual Operating and Construction Budgets of ASTA in accordance with the ASG's regular budget process.
- (5) review and approve ASTA's long-range plan to insure compliance with the Rate Integration Plan filed with the FCC on October 1, 1997 and regularize ASTA's operations in accordance with FCC Regulations.
- (6) review and approve rates before submitting said rates to any appropriate regulatory body as required for final approval.
- (7) review and approve procurement actions.
- (8) review and approve personnel actions.

(9) review and approve accounting and financial management policies and procedures to insure compliance with FCC accounting and auditing requirements.

(10) review, approve and submit Quarterly Performance and financial Reports to the Governor no later than 30 days after the end of the Quarter.

(11) review, approve and submit an Annual Financial Report to the Governor no later than 90 days after the end of the fiscal year.

(12) shall hold regular meetings at least once every month and shall hold special meetings when necessary. It shall record and keep minutes of all such meetings and make said minutes available for public inspection.

(13) review and approve all other matters properly within the ASTA's authority which are included on the agenda of the ASTA Board.

Section 6: ASTA Board Compensation

ASTA Board members shall be compensated at the rate of \$500.00 per month. No other special compensation shall be authorized.

Section 7: Duties and Responsibilities of Executive Director

The Executive Director shall be the Chief Executive Officer of ASTA, shall report directly to the ASTA Board and shall perform the following duties:

(1) develop policies/programs for the administration, management and operation of ASTA and submit to the ASTA Board for approval.

(2) develop and submit to the ASTA Board the Annual Operating and Construction Budget for approval.

(3) prepare and submit to the ASTA Board Monthly Operating Statements, Quarterly Performance and Financial Reports, and Annual Financial Reports.

(4) hire qualified and experienced management personnel subject to ASTA Board approval and in accordance with government employee laws ASCA Title 7, ASAC Title 4 and the provisions of this Executive Order.

(5) prepare, approve and conduct procurement of supplies, equipment, materials, and personal services, other than employees, in accordance with all applicable laws and rules of American Samoa and the provisions of this Executive Order.

(6) prepare, approve and issue ASTA's bi-weekly payroll checks in accordance with ASTA Board policies and in compliance with local and federal labor laws.

(7) prepare and submit to the ASTA Board monthly summary reports of cash receipts, receivables, payables, and all pertinent financial data necessary for the proper monitoring of ASTA finances.

(8) prepare the agenda for ASTA Board meetings.

Section 8: Transfer of Assets

At a date fixed by the ASTA Board and approved by the Governor, all tangible assets formerly listed under the Office of Communications shall be transferred to ASTA with the rights to operate all items of property including construction in progress.

Section 9: Transfer of Liabilities

At a date fixed by the ASTA Board and approved by the Governor, all outstanding liabilities incurred by the former Office of Communications, including all contracts and statutory obligations, shall be transferred to ASTA.

Section 10: Transfer of Leases, Contracts and Agreements

All leases, contracts, and agreements which were entered into by the former Office of Communications and are current, valid and in effect, shall be transferred to ASTA.

Section 11: Personnel

(1) At a date fixed by the ASTA Board and approved by the Governor, all personnel presently assigned to the Office of Communications shall be transferred to ASTA without any change in salary or in-service date for computation of retirement eligibility credit under the Government Employees' Retirement Fund.

(2) All officers and employees of the authority, other than the Executive Director, are appointed and compensated in accordance with requirements of the government employee laws, ASCA Title 7 and ASAC Title 4, except that the ASTA Board, in conjunction with the Department of Human Resources, may adopt administrative rules, pursuant to 4.1001 ASCA et seq., to supplant government employee rules in the specific categories of personnel recruitment, employment, termination of employee services, disciplinary actions and compensation at levels comparable to prevailing communications levels.

Section 12: Accounting and Budget

ASTA shall assume responsibility for the accounting and financial management of the telecommunications authority and shall perform all related accounting functions, including, but not limited to general ledger, fixed assets, accounts receivable, accounts payable, payroll and cash. ASTA shall apply and adhere to Generally Accepted Accounting Principles (GAAP).

Section 13: Independent Audit

ASTA shall employ a firm of independent certified public accountants with telecommunications experience to examine and report on the condition of financial records and accounts no less than once a year. The report shall be submitted to the Governor by the ASTA Board.

Section 14: Procurement

ASTA may contract for the procurement of supplies, equipment, materials, personal services other than by employees, and construction with any public or private entity upon terms and conditions as it finds necessary to the full and convenient exercise of its purposes and powers, subject to all applicable procurement laws and rules of American Samoa. The authority shall receive and account for its inventory of materials, supplies and equipment.


Section 15: Transition Period

All fees, rates, charges, and contracts in effect during the transfer of property and facilities, and management thereof, to ASTA's control and jurisdiction are considered properly adopted and continue in effect until duly changed or modified.

Section 16: Effective Date

This order is effective immediately and supersedes General Memorandum No. 16-1972.

Dated: Jan 9th, 1998.



TAUESE P.F. SUNIA
Governor

cc: Per Standard List



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EXECUTIVE ORDER No. 03 -1998

**AN ORDER AMENDING EXECUTIVE ORDER No. 02-1998, WHICH
ESTABLISHED THE AMERICAN SAMOA TELECOMMUNICATIONS
AUTHORITY**

Section 1: Authority

This Executive Order is issued under the authority granted to the Governor in Article IV, Section 6, American Samoa Revised Constitution, Title 4 A.S.C.A. Section 4.0111(b) and applicable sections of the Federal Communications Act of 1934, as amended, and the Telecommunications Act of 1996.

Section 2: Purpose

The purpose of this Executive Order is to amend Executive Order 02-1998, which established the American Samoa Telecommunications Authority. Sections 3 and 4 of Executive Order No. 02-1998 are hereby amended to provide for a five (5) member American Samoa Telecommunications (ASTA) Board.

Section 3: Amendment of Executive Order 02-1998

(1) Section 3 of Executive Order 02-1998 is hereby amended to read as follows:

Establishment of the American Samoa Telecommunications Authority

There is hereby established, within the Executive Branch of the American Samoa Government (ASG), the American Samoa Telecommunications Authority (ASTA), formerly known as the Office of Communications. ASTA shall exist as a semi-autonomous agency of ASG and will be governed by a board, which shall be known as the ASTA Board, consisting of five (5) members who are appointed by the Governor for terms of two (2) years.

(2) Section 4 of Executive Order No. 02-1998 is hereby amended to read as follows:

Composition and Qualifications of ASTA Board

Of the five gubernatorial appointees, one member shall be from the American Samoa Government Employees' Retirement Fund Board; two members shall be ASG career employees selected on the basis of character, competence, education, experience, and judgement; and two members shall be from the private sector, selected on the basis of character, competence, education, accounting and finance experience and judgement.

Section 4: Effect

With the exception of the amendments set forth herein, all other provisions contained in Executive Order 02-1998 remain in full force and effect.

Section 5: Effective Date

This order is effective immediately.

Dated: JAN-12th, 1998.



TAUESE P.F. SUNIA
Governor

cc: Per Standard List